

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Parts 1, 73 and 76 of the)
Commission's Rules Regarding)
)
Practice and Procedure: Broadcast Applications)
and Proceedings)
)
Radio Broadcast Services: Fairness Doctrine and)
Digital Broadcast Television Redistribution)
Control)
)
Multichannel Video and Cable Television Service:)
Fairness Doctrine, Personal Attacks, Political)
Editorials and Complaints Regarding Cable)
Programming Service Rates)
)

ORDER

Adopted: August 24, 2011

Released: August 24, 2011

By the Chief, Media Bureau, and Deputy Managing Director, Office of Managing Director:

1. In this Order, we make several nonsubstantive, editorial revisions to Parts 1, 73 and 76 of the Commission's rules. We make these revisions to delete certain rule provisions that are without current legal effect and obsolete.

2. Specifically, this Order deletes Part 1, Subpart D of the Commission's rules to eliminate rules that merely redirect the reader to see similar, re-numbered rules. There is no need to retain these Broadcast Applications and Proceedings rules as the re-numbered rules are properly indexed and accessible. Therefore, Subpart D of Part 1 of the Commission's rules, which includes 47 C.F.R. §§ 1.502 through § 1.615, is no longer needed and is deleted as obsolete.

3. This Order deletes both broadcast and cable rules referencing the Commission's so-called "fairness doctrine." The Commission abrogated the fairness doctrine in 1987, after concluding that it no longer served the public interest, was not statutorily mandated, and was inconsistent with First Amendment values.¹ "[T]he FCC reasoned that the doctrine imposed substantial burdens on broadcasters without countervailing benefits. As a result, the FCC concluded that the doctrine was inconsistent with both the public interest and the First Amendment principles it was intended to promote."² In 1989, the

¹ See *Syracuse Peace Council*, 2 FCC Rcd 5043 (1987), *recon. denied*, 3 FCC Rcd 2035 (1988). In 1989, the Court of Appeals for the District of Columbia Circuit affirmed the Commission's conclusion that the fairness doctrine no longer served the public interest, without reaching the question of the constitutionality of the fairness doctrine. *Syracuse Peace Council v. FCC*, 867 F.2d 654, 656 (D.C. Cir. 1989), *cert denied*, 493 U.S. 1019 (1990).

² *Radio-Television News Directors Assoc. v. FCC*, 184 F.3d 872, 876 (D.C. Cir. 1999).

D.C. Circuit affirmed the FCC's conclusion that the fairness doctrine no longer served the public interest, without reaching the constitutional question.³ Thus, the Commission's broadcast rule, 47 C.F.R. § 73.1910, and the Commission's origination cablecast rule, 47 C.F.R. § 76.209, both referencing the defunct fairness doctrine, are without current legal effect and are deleted as obsolete.

4. This Order also deletes cable rules that were corollaries to the defunct fairness doctrine, the personal attack and political editorial rules, 47 C.F.R. §§ 76.1612 and 76.1613, respectively. The D.C. Circuit issued a writ of mandamus directing the Commission immediately to repeal the personal attack and political editorial rules on October 11, 2000,⁴ which the Commission did on October 26, 2000.⁵ Through an oversight, however, the Commission failed to delete sections 76.1612 and 76.1613 at the time: shortly before the repeal order was adopted, the cable personal attack and political editorial rules had been relocated to different rule sections as part of a non-substantive rule restructuring,⁶ and the order repealing them referred to the superseded rule sections rather than the new ones.⁷ Thus, the Commission's cable personal attack and political editorial rules, 47 C.F.R. §§ 76.1612 and 76.1613, are without current legal effect and are deleted as obsolete.

5. This Order deletes the Commission's "broadcast flag" rules, adopted in 2003. The broadcast flag rules were intended to prevent the indiscriminate distribution of television broadcast content over the Internet.⁸ The Commission's rules were subsequently vacated by the Court of Appeals for the District of Columbia Circuit.⁹ Therefore, the Commission's broadcast flag rules, 47 C.F.R. § 73.8000 and 47 C.F.R. §§ 73.9000 through 73.9009, are without current legal effect and are deleted as obsolete.

6. Finally, this Order deletes rules pertaining to the process for filing and adjudicating complaints concerning the rates charged by a cable system for its cable programming services tier ("CPST"). The Commission's authority to regulate CPST rates sunset in 1999.¹⁰ Therefore, the Commission's CPST complaint process rules, 47 C.F.R. §§ 76.950, 76.951, 76.953, 76.954, 76.955, 76.956, 76.957, 76.960, 76.961, 76.1402, 76.1605 and 76.1606 are without current legal effect and are deleted as obsolete.

7. The rule amendments adopted in this Order and set forth in the attached Appendix are nonsubstantive, editorial revisions of the rules under 47 C.F.R. § 0.231 (b). The revisions adopted in this Order merely delete obsolete rule provisions and we find good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose. *See* 5 U.S.C. § 553 (b) (3) (B). Because the rules being deleted are obsolete and without current legal effect, we also find good cause to make these nonsubstantive, editorial revisions of the rules effective upon publication in the Federal

³ *Syracuse Peace Council v. FCC*, 867 F.2d 654, 656 (D.C. Cir. 1989), *cert denied*, 493 U.S. 1019 (1990).

⁴ *Radio-Television News Directors Association v. FCC*, 229 F.3d 269 (D.C. Cir. 2000).

⁵ *Repeal or Modification of the Personal Attack and Political Editorial Rules, Order*, 15 FCC Rcd 20697 (2000).

⁶ *See* 1998 Biennial Review--Multichannel Video and Cable Television Service, 14 FCC Rcd 4653, 4690 (1999).

⁷ *See Repeal or Modification of the Personal Attack and Political Editorial Rules*, 15 FCC Rcd at 20697. The new rule sections became effective on October 5, 2000, *see* 65 FR 53610-01 (Sept. 5, 2000), less than a month before the adoption and release of the order repealing the personal attack and political editorial rules on October 26, 2000.

⁸ *See Digital Broadcast Content Protection*, 18 FCC Rcd 23550 (2003).

⁹ *See American Library Association, et al. v. FCC*, 406 F.3d 689 (D.C. Cir. 2005).

¹⁰ *See* 47 U.S.C. § 543 (c) (4) ("This subsection shall not apply to cable programming services provided after March 31, 1999."); *see also, Cable Services Action, Cable Television Upper Tier Rate Regulation Ends March 31, 1999*, Report No. CS 99-4 (March 29, 1999).

Register. *See* 5 U.S.C. § 553 (d) (3).

8. Because this Order is being adopted without notice and comment, the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, does not apply.

9. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.¹¹ In addition, therefore, this Order does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.¹² The Commission will send a copy of the Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹³

10. For further information, contact Katie Costello, FCC Media Bureau, Policy Division, Room 4-C830, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-2233, katie.costello@fcc.gov.

11. Accordingly, **IT IS ORDERED THAT**, effective upon publication in the Federal Register, Parts 1, 73 and 76 of the Commission's rules **ARE AMENDED**, as set forth in the attached Appendix, pursuant to the authority contained in sections 4 (i), 5 (c) and 303 (r) of the Communications Act, 47 U.S.C. §§ 154 (i), 155 (c) and 303 (r), and section 0.231 (b) of the Commission's regulations, 47 C.F.R. § 0.231 (b).

12. IT IS FURTHER ORDERED that the Secretary shall cause a copy of this Order to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

Dana Shaffer
Deputy Managing Director

¹¹ *See* Public Law 104-13, 44 U.S.C. § 3501, *et seq.*

¹² *See* 44 U.S.C. § 3506 (c) (4).

¹³ *See* 5 U.S.C. § 801 (a) (1) (A).

Revised Rules

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 1 — PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: 15 U.S.C. 79, *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

2. Remove Subpart D.

Subpart D [Removed]

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73 — RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334, 336 and 339.

2. Remove § 73.1910.

§73.1910 [Removed]

3. Remove Subpart L.

Subpart L [Removed]

4. Remove Subpart M.

Subpart M [Removed]

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 76 — MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

2. Remove §76.209.

§76.209 [Removed]

3. Remove § 76.950.

§76.950 [Removed]

4. Remove §76.951.

§76.951 [Removed]

5. Remove §76.953.

§76.953 [Removed]

6. Remove §76.954.
§76.954 [Removed]

7. Remove §76.955.
§76.955 [Removed]

8. Remove §76.956.
§76.956 [Removed]

9. Remove §76.957.
§76.957 [Removed]

10. Remove §76.960.
§76.960 [Removed]

11. Remove §76.961.
§76.961 [Removed]

12. In §76.985, remove forms entitled "INSTRUCTIONS FOR FCC 329," "FCC329".

§76.985 [Amended]

13. Remove §76.1402.
§76.1402 [Removed]

14. Remove § 76.1605.
§76.1605 [Removed]

15. Remove § 76.1606.
§76.1606 [Removed]

16. Remove § 76.1612.
§76.1612 [Removed]

17. Remove § 76.1613.
§76.1613 [Removed]